

ASHLAND CONVALESCENT CENTER, INC., ASHLAND, VIRGINIA

This Settlement Agreement is entered into this 11th day of July, 2002 by and between the United States of America, including the United States Attorney for the Eastern District of Virginia, and the Department of Health and Human Services, Office of Inspector General (collectively "United States"); the Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General and the Department of Medical Assistance Services (DMAS) on behalf of the Commonwealth of Virginia (collectively the Commonwealth of Virginia); and the Ashland Convalescent Center, Inc., Ashland, Virginia ("Ashland") and the Board of Directors of the Ashland Convalescent Center ("Board"), to resolve the potential civil claims more fully described herein. The above sovereigns and entities are referred to herein as "the Parties."

PREAMBLE

A. WHEREAS, Ashland, located at 906 Thompson Street, Ashland, Virginia 23005, is a long-term care nursing facility engaged in the provision of health care services to Medicaid beneficiaries;

B. WHEREAS the United States Attorney's Office for the Eastern District of Virginia, the Commonwealth of Virginia, and the Department of Health and Human Services, (collectively referred to as "the Governments") conducted an investigation arising under the federal civil False Claims Act, 31 U.S.C. §§ 3729-3733 and Virginia's civil Medicaid Fraud statutes pursuant to Virginia Code Annotated § 32.1-312 and § 32.1-313. As a result, the Governments contend that during a period from 1995 to the present, Ashland provided inadequate care to residents by failing to provide adequate nursing services in a timely manner in view of the current clinical condition of these residents and by actions or omissions subjecting residents to conditions posing

unreasonable risks to their health and well being;

C. WHEREAS, the Governments allege that the above conduct resulted in damages to the Medicare and Medicaid health care programs, in that the Governments contend that the care provided was not in compliance with all existing regulations and standards;

D. WHEREAS, Civil Monetary Penalties were imposed against Ashland by HCFA/CMS during this time period pursuant to 42 U.S.C. §§ 1395 i-3(g) and (h), 1396r(g) and (h); 42 C.F.R. § 488.400 et. seq and Ashland was terminated from participation in the Medicare program pursuant to 42 C.F.R. § 489.53(a)(1);

E. WHEREAS, Ashland and the Board in entering into this Settlement Agreement do not admit that the care provided was inadequate, and further deny any wrongdoing, inadequacy or liability in regard to the care rendered to any resident of Ashland; moreover, this Settlement Agreement may not be used to establish liability in any other proceeding;

F. WHEREAS, Ashland and the Board have taken certain executive actions, including the adoption of a Restoration Plan for the improvement of care at the ACC;

G. WHEREAS, the Parties wish to resolve this matter in an amicable manner without the need for protracted and expensive litigation;

H. WHEREAS, the Parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing on the part of Ashland or its Board, currently or formerly employed officers, agents, and employees of any of the foregoing, and may not be used as evidence of such in any proceeding by either the Governments or any third party;

I. NOW THEREFORE, for and in consideration of the mutual covenants and conditions

contained herein and other good and valuable consideration, the Parties, intending to be legally bound, enter into the following Settlement Agreement:

PAYMENTS DUE TO THE UNITED STATES
and FINANCING OF REQUIREMENTS OF SETTLEMENT AGREEMENT

1. Ashland agrees to pay the sum of forty-five thousand dollars (\$ 45,000) to the United States in settlement of investigations arising from the federal civil False Claims Act 31 U.S.C. §§ 3729-3733 and Virginia's civil Medicaid Fraud statutes §§ 32.1 -312 and 313 of the Code of Virginia. In satisfaction thereof, a check in said amount of \$ 45,000 shall be tendered to the Commonwealth of Virginia, Medicaid Fraud Control Unit, with the designated payee: Virginia Attorney General's Office, Medicaid Fraud Control Unit. The "date of this Settlement Agreement, date of execution," or "Implementation Date" shall be the date of the signature of the Chairperson, Board of Directors, Ashland.
2. Ashland represents that it has secured a line of credit of not less than \$ 1,250,000 for the purpose of funding operating deficits, this Settlement Agreement and its Restoration Plan and agrees to expend these funds to ensure the full implementation of this Settlement Agreement.
3. From this line of credit identified in paragraph 2, above, or otherwise, Ashland agrees to establish a separate account for the maintenance of a cash reserve in the amount of \$ 400,000 (hereinafter, the "Implementation Account"), the proceeds of which shall be used expressly for Ashland's payment of expenses associated with the federal monitor, quality of care improvements, approved capital expenditures, and other compliance requirements set forth in this Settlement Agreement during the initial twelve month period following the Implementation Date except as noted below. The parties agree that the funds will be placed in the

Implementation Account no later than 10 (ten) business days after the date of this agreement and that all of the funds needed to support the Monitor provided for in paragraph 24 for a two year period shall be placed in the fund at this time.

4. Commencing the thirteenth month following the Implementation Date, Ashland agrees to place up to an additional \$ 20,850 per month up to and including the twenty-fourth month following the Implementation Date in the separate cash reserve fund for any additional improvements that may be necessary to ensure full implementation of this Settlement Agreement. The parties agree that the Monitor and Management Consultant provided for by paragraph 13 a. of this agreement shall develop a list of further, necessary improvements together with a schedule for their reasonable implementation no later than the 10th day of the twelfth month following the Implementation Date. In exercising their professional judgment in developing such a list, the Monitor and Management Consultant shall be guided by the requirements of Ashland's Corporate Compliance Plan required by paragraph 22 of this agreement. Ashland agrees to implement these improvements during the second year of implementation of this agreement.

5. The parties agree that the separate cash reserve fund may be maintained by John B. Thompson, Esq., and/or Christopher M. Malone, Thompson & McMullan, who shall act as the dispersing agents for these funds.

6. The parties recognize that Ashland will expend at least \$ 750,000 in addition to the sums set forth in paragraphs 1, 3 and 4, above, for the period of time since the commencement of the civil investigation of Ashland to July 30, 2002 to cover operating deficits, payment of outstanding loans, debt service, staffing requirements, immediate facility improvements, and

other costs attendant to the operation of and provision of care at Ashland.

7. Ashland's agreement to borrow or otherwise fund the requirements of this Settlement Agreement shall continue throughout the lifetime of this agreement notwithstanding any declaration of bankruptcy or other financial loss of Ashland.

STAFFING, TRAINING, and other REMEDIAL MEASURES

8. Ashland shall at all times ensure that the facility is staffed with a sufficient number of qualified staff to fully meet the needs of residents as set forth in their comprehensive care plans. Ashland shall ensure that all decisions regarding the number of necessary staff are based on the identified needs of residents. Ashland shall budget and staff with total nursing services at a minimum of 3.45 labor hours per patient day ("LHPPD"). Total nursing services shall include registered nurses, licensed practical nurses, and certified nursing assistants, and shall be comprised of at least 2.0 LHPPD in certified nursing assistant hours. The Parties recognize that the nursing needs of residents may change based upon such factors as the acuity of the medical conditions of residents, their specialized needs, and the number of residents residing in the facility. When, in the professional judgment of Ashland's Administrator and Director of Nursing, or in response to suggestions by the Monitor, it is apparent that staff should be adjusted between care-giving disciplines or increased to meet then-current needs, Ashland agrees to adjust or increase such staffing.

9. Ashland agrees to establish a program of incentives, including salary and benefit enhancements, to attract and retain competent and qualified nursing staff at Ashland. Ashland further agrees to review, modify and enhance, as necessary, the benefits it affords all employees, including vacation time, sick leave, flexi-time schedules, insurance coverage, retirement benefits,

and other benefits that may be available to its employees as a means of retaining competent and qualified staff. Any incentives provided to temporary agency nurses in order to meet the minimum staffing requirements required by this Settlement Agreement may not be used to support compliance with the requirements of this paragraph. Following the first year of the implementation of this agreement, Ashland agrees to continue a program of recruitment and retention, including compensation enhancements and other incentives to retain qualified staff.

10. All staff shall be deployed throughout the facility in a manner designed to ensure that the individual needs of residents are met.

11. Ashland shall use temporary staff only as necessary to meet the needs of residents and fulfill Ashland's obligations to ensure there is adequate staffing to meet resident needs. Ashland shall strive to minimize the number of individuals working at the facility who are on temporary assignment or not employed by Ashland, and shall continue to implement measures toward that end. Ashland shall ensure that no individual with a felony criminal record, or other criminal matter that would bar him or her from being employed as a hands-on caregiver in the Commonwealth of Virginia, or any person and/or business entity who has been excluded from or deemed ineligible to participate in federal health care programs is hired to work or contracted with for services at the facility in any capacity. Ashland agrees to review the web-sites of the United States Department of Health and Human Services (List of Parties Excluded Individuals/Entities at <http://oig.hhs.gov>) and the General Services Administration (List of Parties Excluded from Federal Programs at <http://epls.arnet.gov>) to determine ineligible individuals and business entities. These web-sites shall constitute the standard for determining excluded parties and individuals.

12. Ashland stipulates that the following damages may be imposed at the discretion of the Governments for non-compliance with the staffing requirements of this Settlement Agreement:

a. The Governments may impose a maximum penalty of \$10,000 for any pay period in which the minimum average LHPPD actually worked falls below 3.2 LHPPD.

b. The Governments may also impose a maximum penalty of \$ 25,000 for the second consecutive pay period in which the minimum average LHPPD actually worked falls below 3.2 LHPPD .

c. The Governments agree to consult with Ashland prior to imposing any penalty provided by this paragraph.

d. Ashland agrees to self-monitor compliance with this paragraph by utilizing appropriately maintained payroll records or other records reflecting the attendance of staff to measure compliance and will report any failure to meet minimum staffing levels to the Monitor, who will investigate the matter and provide a report to the Parties. Ashland shall make its payroll or other records available to the Governments, the Monitor, and Clifton Gunderson or other audit designee upon request.

e. Ashland waives any right to contest in any future proceeding the enforceability of the imposition of the above stipulated damages pursuant to the laws of the Commonwealth of Virginia or otherwise.

13. In addition to the payment described in paragraph 1, Ashland agrees to the following steps to supplement the expertise of Ashland staff and to facilitate the provision of care as required by federal and state regulatory standards:

a. Retain a Management Consultant with expertise in the operation of long term care

facilities or nursing homes for the purpose of evaluating the care delivery system at Ashland and to recommend needed improvements which, if implemented on a consistent basis, will ensure the provision of adequate care to Ashland's residents consistent with federal regulatory requirements. Ashland agrees to expend no less than \$ 50,000 for these services during the twelve months following the Implementation Date and to retain such consultant from time to time thereafter as may be necessary to support the implementation of this Settlement Agreement. The parties agree that the consultant retained will visit Ashland on a regular basis with more frequent visits for reasonable periods of time during the first six months of this agreement.

b. Retain a training specialist with expertise in the delivery of care in long term care facilities or nursing homes for the purpose of establishing and implementing a comprehensive, professionally based, orientation and in-service training program for all staff at Ashland. Such training may include utilization of programs available through VCU/MCV and local community colleges. Such consultant shall reduce the components of the training program to writing, establish an implementation schedule, implement the training as scheduled, or otherwise arrange for the consistent implementation of the training program for staff. Ashland agrees to expend no less than \$ 50,000 for these services during the first year of this agreement and to retain on staff an individual fully qualified to afford training to staff thereafter.

c. Retain a wound care consultant for the purpose of developing and ensuring the timely and effective implementation of care plans and other steps to care for patients with pressure sores and other wounds and to ensure the prevention of avoidable pressure sores and other wounds in all residents. Ashland agrees to expend no less than \$ 30,000 for these services over the twelve months following the Implementation Date and to ensure that consultants are retained, as

necessary, to afford adequate wound care thereafter.

d. Review and extend the hours of coverage as may be necessary at Ashland by physicians sufficient to ensure that the specialized medical conditions of residents are addressed adequately consistent with the timely exercise of professional judgment by such physician or physicians.

e. Assign a present member of the Ashland staff currently serving as a quality assurance adviser to address medication errors at Ashland. Such adviser shall monitor the administration of medication, ensure all nurses are properly trained in the administration of all medications utilized by residents of Ashland, and make any necessary written recommendations as may be necessary to ensure that medication administration at Ashland comports with contemporaneous, generally accepted professional standards. Ashland agrees to implement all reasonable recommendations developed by the quality assurance advisor.

f. Hire a full-time permanent Certified Nursing Assistant Coordinator with an annual salary of at least \$ 40,000 to coordinate the duties and professional activities of CNAs at Ashland and otherwise ensure that each CNA performs his or her duties in a competent and professional manner.

g. Retain a Volunteer Director and Community Relations Director with responsibility for ensuring the availability of appropriate activities for residents both within and without the facility.

h. Designate a committee composed of qualified professionals to investigate all injuries and each and every allegation of alleged abuse or mistreatment of residents at Ashland, recommend such remedial steps as are necessary to avoid any further injuries or future abuse or

mistreatment, and report such incidents to appropriate law enforcement officials, as appropriate.

i. Commence implementation of the improvements identified in the ACC Restoration Plan dated February 25, 2002, attached as "Exhibit A," by spending no less than \$ 105,000 on such items identified on ACC Schedule for Improvement, attached as "Exhibit B," during the twelve months following the Implementation Date. The parties agree that the Management Consultant and Monitor shall promptly meet and confer and determine a priority list for expenditures for items identified on Exhibit B.

j. Ashland shall be entitled, upon the written recommendation of the Management Consultant and the Monitor, to reallocate the amounts of funds to be expended pursuant to this paragraph among the various categories established therein, provided that the aggregate amount of all expenditures required during the twelve months following the Implementation Date shall not be less than the total amount of funds required to be expended by this paragraph. In making decisions to reallocate funds specified in this paragraph the Management Consultant and Monitor shall be guided by the principle that funds should be directed to the most urgent needs to be addressed by the remedies contemplated by this paragraph after other needs have been fully met.

14. Ashland agrees to provide the Governments and the Monitor with monthly status reports of amounts expended by the facility to implement the requirements of this Settlement Agreement, including the requirements of paragraph 13, with the first such status report being due 15 days following the close of the first full month following the date of this agreement, shall continue thereafter until all such requirements have been fully implemented. Ashland's Director of Operations shall certify the status reports. Ashland shall provide such supporting documentation as is requested by the Governments or the Monitor upon request. Furthermore,

the Governments and the Monitor may make recommendations for further expenditures for specific items and activities beyond those explicitly set forth in this agreement that shall be considered in good faith by Ashland.

QUALITY OF CARE

15. Ashland will provide each resident with adequate skin care, nutrition, turning and positioning and other services to decrease the likelihood of skin breakdown and the development of pressure sores. Ashland, its agents, employees, contractors, and/or subcontractors agree to abide by the provisions of the Clinical Practice Guidelines for the Prediction, Prevention and Treatment of Pressure Ulcers ("Guidelines") promulgated by the Agency for Health Care Policy Research, now known as the Agency for Healthcare Research and Quality ("AHCPR"); specifically, *Pressure Ulcers in Adults: Prediction and Prevention, Clinical Practice Guideline Number 3, 92-0047* (May 1992) and *Treatment of Pressure Ulcers, Clinical Practice Guideline Number 15, 95-0652* (December 1995) available at www.ahcpr.gov. Ashland will use the Guidelines as a basis to establish Ashland's individualized care plans for skin and wound care for residents. Ashland shall implement protocols and procedures for skin and wound care that reflect the standards set forth in the AHCPR Guidelines.

16. Ashland agrees to implement a nutritional monitoring program for residents and agrees to include in its Corporate Compliance Plan required by paragraph 22 standards and guidelines for nutrition therapy for pressure ulcers/wounds that reflect the requirements of the standards set forth in Exhibit C as modified by the comments of Dr. Peter A. Boling reflected in his May 24, 2002 letter to Ms. Laura Stafford, RN, ACC, attached as Exhibit D. Ashland also agrees to ensure that all residents receive proper hydration, and sufficient nutrition and hydration to avoid

inadequate nutrition and avoid preventable weight loss.

17. Ashland will provide enteral and parenteral feedings for only those residents who are unable to obtain adequate nutritional intake orally and whose clinical condition demonstrates that enteral/parenteral feedings are unavoidable, while at the same time honoring physician orders and the residents' Advance Directive choices, if available. Clinical decisions shall be based on an individualized evaluation of the resident's nutritional needs.

18. Ashland will provide residents with appropriate incontinence care, reasonable personal hygiene measures, and training or support in activities of daily living in accordance with all applicable statutes and regulations in a timely fashion.

19. Ashland agrees that effective pain management will be timely offered and administered to all residents in need of medication or other treatment for pain in accordance with all applicable statutes and regulations.

20. Ashland shall ensure that all medication is timely distributed by nursing staff consistent with contemporaneous professional standards and in accordance with all applicable statutes and regulations.

21. Within ninety (90) days of the Implementation Date, Ashland will provide professionally based mandatory in-service training in all areas described in paragraphs 15 to 20 above. All dietary, clinical management, and nursing staff at Ashland shall attend the in-service training as is appropriate for their discipline and level of job responsibilities (the "Initial Training Period"). Thereafter, this training and such other appropriate professional development and compliance training for the skill areas designated in paragraphs 15 through 20 shall be provided in accordance with the Compliance Plan and the specific training schedule set forth for the 180 days

following the Initial Training Period, and, thereafter, no less than annually. All new dietary, clinical management, and nursing staff at Ashland shall be trained in the areas described in paragraphs 15 through 20, as appropriate for his or her discipline, within twenty (20) calendar days of the employee's commencing employment with Ashland. Ashland will at all times maintain a comprehensive long term training program for all dietary, clinical management, and nursing staff at Ashland to ensure that each is knowledgeable and competent to perform all assigned duties.

22. Ashland agrees that Ashland will comply fully with the applicable laws, rules and regulations governing the Medicare and Medicaid programs, including the Nursing Home Reform Act of 1987, as amended and codified at 42 U.S.C. §§ 1395, et. seq., 1396 et. seq.; 42 C.F.R. Parts 483, 488. Ashland further agrees to adopt a Corporate Compliance Plan within one hundred twenty (120) days from the date of execution of this Agreement that is based upon the policies and principles set forth in HHS-OIG's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (March 16, 2000). Such Corporate Compliance Plan shall contain a comprehensive set of specific policies and procedures to ensure compliance by Ashland, including such issues as a Code of Conduct; Financial, Employee, and Service Oversight; and Quality of Care and a description of the specific steps Ashland shall take to achieve overall compliance with this Settlement Agreement. The description of such specific steps shall, at a minimum, include those steps required to fully implement ACC's Restoration Plan, attached hereto as "Exhibit A," steps necessary to fully implement the requirements set forth in paragraphs 15 - 20, above, and a schedule for implementation. The Corporate Compliance Plan shall be submitted for review and approval by the United States Attorney's

Office for the Eastern District of Virginia (EDVA) within 120 days after the Implementation Date. The EDVA shall provide all comments to Ashland regarding their proposed Corporate Compliance Plan within 30 days of receipt. Ashland agrees to consider and incorporate the substance of these comments in their plan as appropriate. Ashland agrees to promptly meet and discuss any comment not incorporated into the plan with the Parties. In the event, the Parties fail to reach a final agreement as the adequacy of Ashland's Corporate Compliance Plan, the Parties agree to submit the issues in dispute to, and to abide by the decision of, the United States District Court for the Eastern District of Virginia. In addition, the parties agree that the Corporate Compliance Plan may be amended from time to time based upon a written recommendation by the Monitor; if Ashland rejects the recommendation and declines to amend its Plan to incorporate the Monitor's recommendation, the parties agree to submit the recommendation to, and abide by the decision of, the United States District Court for the Eastern District of Virginia.

RECORDS

23. Ashland will adopt and enforce policies requiring that all professional standards relating to the proper means of entering and where necessary, changing, information in a medical record be strictly adhered to. Ashland shall train its staff that falsification or improper alteration of any resident record and other document related to resident care is forbidden. Ashland shall obtain from each employee a signed statement indicating that the employee understands the policy forbidding any falsification or improper alteration and the appropriate manner in which to make entries into medical records and, should a change be necessary, the acceptable means of documenting the changes and the reasons therefore. Ashland further agrees that it will terminate the employment of any person found to have willfully or through deliberate ignorance or reckless

disregard caused a falsification or improper alteration of any record maintained at Ashland.

Ashland further agrees that during the monitoring period the Governments may assess penalties not to exceed \$ 50,000 for each willful and material falsification or improper alteration of any record (or any such alterations done through deliberate ignorance or reckless disregard related) to resident care upon a finding by any Court of competent jurisdiction that: 1) the record related to resident care was willfully or through deliberate ignorance or reckless disregard falsified by anyone at the direction of Ashland's managerial staff, or 2) was willfully or through deliberate ignorance or reckless disregard falsified by an employee of Ashland who was not disciplined in accordance with the standards set forth in this paragraph. Clinical disagreement does not constitute falsification for purposes of this section. Ashland waives any right to contest the enforceability of these sanctions pursuant to the laws of the Commonwealth of Virginia or otherwise.

MONITOR

24. Ashland agrees to engage an independent third party monitor who shall be a Registered Nurse (the "Monitor") with substantial experience in the care of elderly persons residing in a nursing home setting to assist and monitor Ashland's compliance with the terms of this Settlement Agreement and the provision of quality care. The United States and Ashland shall mutually agree upon the Monitor. If the Parties are unable to agree on the appointment of a Monitor, the United States may nominate the Monitor and petition the United States District Court for the Eastern District of Virginia or any other court of competent jurisdiction for the appointment of its nominee.

25. If the Monitor resigns or is removed for any reason by mutual agreement of the Parties

prior to the completion of his/her term of appointment, the United States and Ashland shall mutually agree upon the appointment of a successor Monitor. If the Parties are unable to agree on the appointment of a successor Monitor, the United States may nominate the Monitor and petition the United States District Court for the Eastern District of Virginia or another court of competent jurisdiction for the appointment of its nominee.

26. The Monitor shall visit Ashland for a period of two (2) years from the effective date of this Settlement Agreement and shall have access to all current nursing home residents, their medical records, records in the possession or control of Ashland (e.g. staffing records and quality assurance reviews) and Ashland staff and employees, for purposes of ensuring coordination of responses to identified problems and enabling the Monitor to fulfill his/her duties. Ashland shall ensure the Monitor's immediate access to facilities, individuals, and documents, and assist in obtaining the full cooperation of its current employees, contractors, and agents.

27. The Monitor shall evaluate compliance by Ashland with the requirements of this Settlement Agreement and shall advise management and staff as to recommended steps and procedures that, in the Monitor's view, may be implemented to facilitate compliance with this Settlement Agreement. The Monitor shall inspect and evaluate staffing reports showing LHPPD and may make recommendations as to increased staffing levels or staffing adjustments.

28. The Monitor shall provide an exit interview to appropriate officials of Ashland following the conclusion of each visit to the facility and may make recommendations both informally and in writing. At the request of Ashland, the Monitor may provide or arrange for direct technical assistance to facilitate compliance with this Settlement Agreement. The cost of mutually agreed upon outside technical assistance shall be paid by Ashland. Technical assistance provided for by

the Monitor will be compensated within the terms of this agreement. The Monitor shall have no financial interest in any source of outside technical assistance recommended to the facility.

29. It is the express intent of the Parties that the Monitor work in a cooperative and amicable manner with Ashland, provide technical assistance, as requested, and otherwise facilitate compliance with this Settlement Agreement by Ashland. Ashland will cooperate with the Monitor appointed to assist in the implementation of this Agreement.

30. The Monitor shall have no authority to direct the care of any individual resident but may notify the Medical Director and/or the Director of Nursing of a recommendation that any resident be seen by a physician within a reasonable period of time in light of the resident's condition. Ashland agrees that it will contact the resident's attending physician when requested by the Monitor, and will follow the directions of the physician, if any. If, in the professional judgment of the Monitor, an emergency exists with respect to any resident or other condition, the Monitor shall immediately notify the Administrator or appropriate supervisor on duty at Ashland so that immediate remedial action can be taken. Ashland shall record such requests on the document used as the "24 Hour Report" and respond according to the facility's protocols. Nothing in this paragraph shall be construed as preventing the Monitor from notifying the Parties immediately. The Parties agree to confer and address the issues raised by the Monitor as soon thereafter as is practicable.

31. The Monitor may confer and correspond with the Parties on an ex parte basis, and both the Parties and the Monitor shall participate in regularly scheduled conferences (which may be attended by phone) to discuss the Monitor's reports. Within ten (10) days from the Implementation Date, or the Monitor's appointment, whichever occurs last, the Monitor shall

submit a budget to the Governments and Ashland for the two (2) year monitoring period. During the two (2) year period, the Monitor shall visit Ashland at least monthly for no fewer than sixteen hours unless unforeseen or emergency circumstances occur or unless otherwise agreed to by the Parties to this Settlement Agreement.

32. Within fourteen calendar days following the conclusion of each visit, the Monitor shall write a brief and concise written report documenting any recommendations relating to compliance or any other matter addressed in this Settlement Agreement. The report shall document any recommendations relating to compliance and include all remedial actions, ongoing quality initiatives or other actions taken by Ashland in response to the identified issues, and any recommendations for amendments to Ashland Corporate Compliance Plan. The Monitor shall deliver the report to the Parties to this Settlement Agreement by delivering a copy to the following named persons (or his or her designee) via electronic mail or facsimile, and USPS regular mail, or such other method of delivery agreed upon by the Parties.

Arthur E. Peabody, Jr.
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
Fax: (703)299-3983

Richard Shelley, Administrator
Ashland Convalescent Center
906 Thompson Street
Ashland, VA 23005
Fax: (804) 752-4916

Christopher M. Malone, Esq.
Thompson & McMullan
100 Shockhoe Slip

Richmond, VA 23219
FAX (804) 780-1813

33. Upon receipt of the report, Ashland shall have the opportunity to submit a response regarding any concerns raised by the Monitor and provide any further information to clarify or contest the Monitor's conclusions and explain subsequent actions taken by Ashland in response to these concerns. Ashland's response, if any, shall be submitted within ten (10) business days of receipt by Ashland of the Monitor's report, via electronic mail or facsimile and USPS regular mail, as directed by the Governments. Ashland and the United States agree that, at the request of Ashland or the Governments, the Parties shall meet in person or via teleconference promptly to discuss any issues or concerns raised by the Monitor or to otherwise facilitate compliance.

Ashland is not bound by the Monitor's recommendations or conclusions but agrees to consider and address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Agreement shall prevent the United States from calling the Monitor as a witness in any proceeding brought to enforce this settlement agreement.

34. The Monitor's compensation and reasonable expenses shall be set forth in a budget. Ashland shall bear all reasonable costs and expenses of the Monitor consistent with the hourly rates established. The Parties agree that the total budget for the monitoring program for two years shall not exceed the amount of \$125,000 unless unforeseen circumstances arise.

35. The Monitor shall submit itemized monthly invoices to the Administrator of Ashland that satisfactorily account for time and reasonable travel and lodging expenses incurred in carrying out the duties of Monitor in accordance with the budget. The Monitor shall certify that the invoices are accurate. Failure to pay the Monitor within thirty (30) calendar days of review and

approval of his/her invoice shall constitute breach of this Agreement. At all times the Monitor shall coordinate his or her activities, including interviews and meetings, with the Administrator or the Director of Nursing and/or Ashland personnel to maximize participation and to minimize disruption in the day-to-day operations of the facility. The Monitor may visit the facility at any time without notice. All information, including identifiable personal health care and other information of all residents and other information regarding residents and staff, and all documents pertaining thereto, are strictly confidential and shall not be disclosed by the Monitor to anyone other than the Parties except as necessary to enforce this Agreement, or as otherwise required by law, regulation, or official process. In the event that the Monitor identifies a situation that the United States believes immediately jeopardizes the health and safety of residents of Ashland, the United States shall notify the Parties, and may take whatever action authorized by law it deems necessary to ensure the health and safety of the residents.

36. No later than the second anniversary of the appointment of the Monitor, the Monitor shall prepare comprehensive Final Report evaluating the status of compliance by Ashland with each and every provision of this Settlement Agreement, as well as Ashland's responses to each area of concern, and deliver such Final Report to the Parties pursuant to the provisions of paragraph 32. Ashland shall have 30 days in which to deliver their comments, any evidentiary rebuttal, and response to the Final Report. If, after review of the Final Report and any comments provided by Ashland, the United States determines that Ashland has achieved compliance with this Settlement Agreement, monitoring activities shall terminate. If the United States believes that compliance has not been achieved, the United States shall promptly notify Ashland and monitoring activities shall continue. In any court proceeding Ashland may file seeking the

termination of the Monitor, Ashland shall bear the burden of establishing that they have fully and faithfully implemented each and every provision of this Settlement Agreement. The Parties agree that the United States District Court for the Eastern District of Virginia is the appropriate forum for any such action.

AUDITS, COMPLIANCE, REPORTS, and ENFORCEMENT

37. Ashland agrees that the Governments may perform a quarterly audit of its checks and check register and any other financial record maintained with respect to the financial condition of Ashland. Such quarterly audits shall be performed by Clifton Gunderson, LLC or other qualified designee chosen and retained by the United States Attorney's Office, who, after a reasonable time following completion of the audit, shall serve on each of the Parties to this Agreement a brief and concise report with respect to his/her findings and any recommendations.

38. Ashland agrees to develop in writing within 120 days of the date of this Settlement Agreement a plan for the regular evaluation of compliance with this Settlement Agreement by Ashland. The Parties agree that Ashland's Director of Operations, Ms. Janice Rackley, shall serve as internal compliance officer.

39. If Ashland fails to comply with any of the terms of this Settlement Agreement, or if any of Ashland's representations or warranties be willfully and materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. Seek specific performance of this Settlement Agreement, in which case the prevailing party shall be entitled to an award of reasonable attorneys fees and costs; or
- b. Exercise any other right granted by law, including civil contempt.

40. If the United States exercises any of its rights under paragraphs 35 or 39 of this

Settlement Agreement, Ashland specifically reserves all of its rights to challenge, defend and contest any such action.

41. Ashland and its agents, employees, contractors and/or subcontractors agree that they will not intimidate or retaliate against any individual or individuals who cooperated with this investigation, or cooperates with any future effort to enforce the provisions of this Settlement Agreement or express other concerns to the government either voluntarily or in response to any future inquiries by state or federal officials.

42. Except as specifically provided otherwise in this Settlement Agreement with respect to the Monitor, the obligations imposed by this Settlement Agreement on Ashland shall be in effect for a period of three (3) years from the effective date of this Settlement Agreement. During that three-year period, thirty (30) days after the first, second and third anniversary date of this Settlement Agreement, Ashland will submit Annual Reports to the United States Attorney, Eastern District of Virginia regarding the status of its compliance with this Agreement. Each annual report shall include a description of the specific steps that Ashland has taken to implement this Agreement; barriers or impediments encountered that have precluded full and timely implementation of the Agreement, and the specific steps and/or procedures that have been adopted to overcome such barriers and ensure full implementation of the Agreement; a description of the training programs implemented pursuant to this Agreement and a summary of the activities undertaken in furtherance of these programs; and certification by an appropriate official of Ashland that all covered persons have completed the required training; and that all the information provided is correct.

RELEASES

43. In consideration of the promises made by Ashland in this Settlement Agreement and conditioned upon payment in full of the settlement amounts referenced in paragraph 1, the United States and the Commonwealth of Virginia, on behalf of the sovereigns, its officers, agents, agencies, and departments, hereby release and discharge Ashland from any and all civil or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States may have against Ashland, its parents, affiliates, officers and directors and employees under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 313 of the Code of Virginia, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Ashland from January 1, 1995 to the effective date of this Settlement Agreement and (b) the adequacy of care (as described in paragraph B, above) provided during the period January 1, 1995 to present to all residents of the nursing home.

44. The Parties agree that the releases given in the preceding paragraph specifically exclude the following:

a. Any civil or administrative disputes, adjustments, CMS enforcement actions or claims relating to matters other than those for (1) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Ashland from January 1, 1995 to the effective date of this Settlement Agreement and (2) the adequacy of care provided during the

period January 1, 1995 to the present, to all residents of the nursing home.

b. Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.

c. Any disputes or claims arising under any express or implied warranties relating to products or services.

d. Any disputes or claims arising under the criminal laws of the United States or the Commonwealth of Virginia.

e. Except as explicitly stated otherwise in this settlement agreement, any administrative liability, including mandatory or permissive exclusion from federal health care programs.

f. Subject to the enforcement provisions of paragraphs 32 and 35, any obligations created by this Settlement Agreement.

g. Any civil money penalty or termination action by CMS, if any such action is based on matters other than deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Ashland from January 1, 1995 to the effective date of this Settlement Agreement and the adequacy of care (as described in paragraph B, above) provided during the period January 1, 1995 to present.

45. Ashland agrees that all costs (as defined in the Federal Acquisition Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395-1395 g, and §§ 1396-1396v, and the regulations promulgated there under) incurred by or on behalf of Ashland in connection with: (a) the government's investigations, and Ashland's investigation and defense of the matter covered by this Settlement Agreement, (b) the negotiation of this Settlement Agreement, and (c) the payments made to the United States pursuant to paragraph 1

of this Settlement Agreement, and (d) any corrective actions taken pursuant to this Agreement that are not related to providing resident care, (including but not limited to the costs associated with hiring the Monitor and filing required reports and certifications) shall be unallowable costs for government contract accounting and for Medicare, Medicaid, VA and FEHBP reimbursement purposes. Unallowable costs shall not include: the cost of additional in service professional and compliance training for the staff, the costs related to additional personnel, including consultants, hired or retained for the purpose of improving resident care, capital improvements and other expenditures related to this agreement. Unallowable costs shall be separately estimated and accounted for by Ashland and Ashland will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Ashland, to TRICARE, VA or FEHBP programs. Nothing in this Settlement Agreement shall constitute a waiver of the rights of Ashland, or any Medicare fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re-examine the unallowable costs described in this paragraph.

46. In consideration for such repose and on the terms and conditions contained herein, Ashland fully and finally releases, dismisses, and forever discharges the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by CMS or HHS-OIG, and damages, including attorneys' fees, costs and expenses, which Ashland could have asserted against the United States, its agencies, employees, servants, and agents before the effective date of this Settlement Agreement for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Ashland from January 1, 1995 to the present and (b) the adequacy of

care provided during the period January 1, 1995 to the present on behalf of the nursing home residents. This paragraph shall not be interpreted to prevent Ashland from pursuing amounts due to Ashland as a result of the Medicare or Medicaid cost reporting process.

47. Ashland agrees to develop within 120 days of this Settlement Agreement a contingency plan to address the procedures and specific steps Ashland will take to ensure the appropriate placement of all residents in alternative facilities in the event that Ashland closes and ceases operation as a nursing home.

OTHER PROVISIONS

48. This Settlement Agreement constitutes the complete agreement between the Parties and may not be amended except by the written consent of the Parties.

49. The undersigned individuals signing this Settlement Agreement on behalf of Ashland represent and warrant that they are authorized by Ashland to execute this Settlement Agreement. The undersigned United States and Commonwealth of Virginia signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement and to bind their respective sovereigns to the terms and conditions herein.

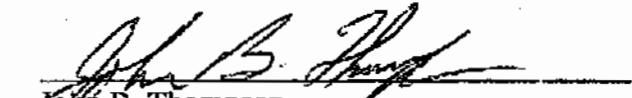
50. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.

51. This Settlement Agreement is legally binding and judicially enforceable by the Parties and it shall be applicable to and binding upon all of the Parties, their officers, agents, employees, assigns, and successors, including any transferees of Ashland.

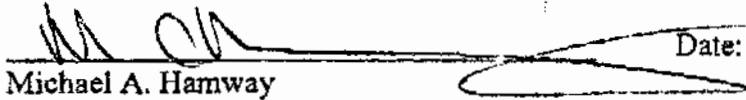
52. The effective date of this Settlement Agreement will be the date of the signature of the

Chairperson, Board of Directors, Ashland Convalescent Center, Inc., Ashland, Virginia.


FOR ASHLAND CONVALESCENT CENTER, INC.


John B. Thompson
Counsel for Ashland Convalescent Center, Inc.

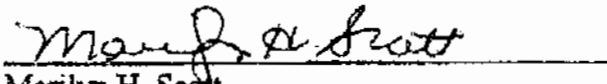
Date: 7/15/02


Michael A. Hamway
Chairperson
Board of Directors, Ashland Convalescent Center, Inc.

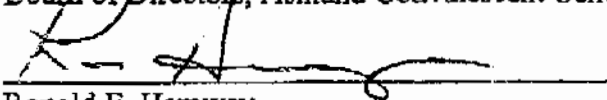
Date: 7-11-02


Janice H. Rackley
Board of Directors, Ashland Convalescent Center

Date: 7-11-02


Marilyn H. Scott
Board of Directors, Ashland Convalescent Center

Date: 7-12-02


Ronald E. Hamway
Board of Directors, Ashland Convalescent Center

Date: 7-14-02

FOR UNITED STATES OF AMERICA

Arthur E. Peabody, Jr.
Arthur E. Peabody, Jr.
Assistant U.S. Attorney
Eastern District of Virginia

Date: 7/15/02

Constance H. Frogale
Constance H. Frogale
Assistant U.S. Attorney
Eastern District of Virginia

Date: 7/10/02

Lewis Morris
Assistant Inspector General
Office of Counsel to the Inspector General
Department of Health and Human Service

Date: _____